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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA
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15 ANTHONY THOMAS,) 3:10-cv-00608-HDM-VPC
16 Plaintiff,)
17 vs.) ORDER
18 PETZING, et al.,)
19 Defendant.)
20 _____)

21 The court has considered the report and recommendation of the
22 United States Magistrate Judge (#34) filed on September 26, 2011,
23 in which the magistrate judge recommends that this court enter an
24 order denying defendants' motion to dismiss (#14), but dismissing
25 with prejudice all claims against the defendants in their official
26 capacities based on Eleventh Amendment immunity. The defendants
27 objected to the report and recommendation on October 13, 2011
28 (#35). No response was filed by the plaintiff, and the time for

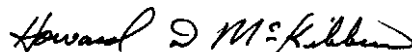
1 filing a response has expired.

2 On a motion to dismiss, the court reviews a complaint to see
3 if, on its face, it contains sufficient factual matter, accepted as
4 true, to state a plausible claim for relief.¹ *Ashcroft v. Iqbal*,
5 129 S. Ct. 1937, 1949 (2009). Where a plaintiff appears pro se,
6 the court construes the pleadings liberally and "afford[s the]
7 plaintiff the benefit of any doubt." *Karim-Panahi v. L.A. Police*
8 *Dep't*, 839 F.2d 621, 623 (9th Cir. 1988).

9 With these standards in mind, the court has considered the
10 pleadings and memoranda of the parties and other relevant matters
11 of record. It has made a review and determination in accordance
12 with the requirements of 28 U.S.C. § 636 and applicable case law.
13 Therefore, and good cause appearing, the defendants' motion to
14 dismiss (#14) the plaintiff's claims against the defendants in
15 their official capacities with prejudice is granted. In all other
16 respects the defendants' motion to dismiss is denied.

17 **IT IS SO ORDERED.**

18 DATED: This 12th day of December, 2011.

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21 UNITED STATES DISTRICT JUDGE
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26 ¹ The court agrees with the magistrate judge that defendants'
27 motion to dismiss should not be construed as a motion for summary
28 judgment.